

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

ROBERT O. HAYDEN,

Petitioner,

Case No. 3:22-cv-376

v.

WARDEN, Chillicothe Correctional
Institution,

District Judge Michael J. Newman
Magistrate Judge Michael R. Merz

Respondent.

ORDER: (1) ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (Doc. No. 6); (2) OVERRULING PETITIONER ROBERT O. HAYDEN'S OBJECTIONS (Doc. No. 7); (3) DENYING AND DISMISSING WITH PREJUDICE HAYDEN'S PETITION FOR A WRIT OF HABEAS CORPUS (Doc. No. 3) ; (4) DENYING A CERTIFICATE OF APPEALABILITY; (5) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING THAT *IN FORMA PAUPERIS* STATUS SHOULD BE DENIED ON APPEAL; AND (6) TERMINATING THIS CASE ON THE DOCKET

Petitioner Robert O. Hayden ("Hayden"), an inmate in state custody, brings this case *pro se* seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. No. 3. This case is before the Court upon the Report and Recommendation of United States Magistrate Judge Michael R. Merz (Doc. No. 6), to whom this case was referred pursuant to 28 U.S.C. § 636(b). Judge Merz recommends that this Court dismiss the petition with prejudice. Doc. No. 6 at PageID 140. Hayden timely filed objections to the Report and Recommendation. Doc. No. 7. As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all filings in this matter, including Hayden's objections.

Upon careful *de novo* consideration of the foregoing, the Court concludes that Hayden's objections (Doc. No. 7) lack merit and that the Report and Recommendation (Doc. No. 6) should be

adopted. The Court agrees with Judge Merz and the United States Court of Appeals for the Sixth Circuit's determination that Hayden presents a second or successive habeas petition, and, consequently, he may not proceed in this case. Doc. Nos. 4–6; *see In re: Robert O. Hayden*, No. 23-3001 (6th Cir. Apr. 14, 2023). As a result, Hayden's petition is subject to dismissal with prejudice. Doc. No. 5 at PageID 134–36; Doc. No. 6 at PageID 140.

Accordingly, the Court (1) **ADOPTS** the Report and Recommendation of the Magistrate Judge (Doc. No. 6) in its entirety; (2) **OVERRULES** Hayden's objections (Doc. No. 7); (3) **DENIES** and **DIMISSES WITH PREJUDICE** Hayden's habeas petition (Doc. No. 3); (4) **DENIES** Hayden a certificate of appealability; (5) **CERTIFIES** that any appeal would be objectively frivolous and **FINDS** that Hayden should be denied *in forma pauperis* status on appeal; and (6) **TERMINATES** this case on the docket.

IT IS SO ORDERED.

May 5, 2023

s/Michael J. Newman
Hon. Michael J. Newman
United States District Judge